

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13255, of Margot Kelly, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the floor area ratio requirements (Sub-section 5301.1) and from the requirements that all required parking spaces shall be nine feet wide and nineteen feet long (Sub-section 7204.1) to allow an existing commercial/residential use building to be converted to complete commercial use in a C-2-A District at the premises 729 - 8th Street, S.E., (Square 904, Lot 836).

HEARING DATE: July 30, 1980
DECISION DATE: Septembet 3, 1980

FINDINGS OF FACT:

1. The subject property is located on the west side of 8th Street between G and "I" Streets, S.E., and is known as 729 - 8th Street, S.E. It is in a C-2-A District.
2. The subject site is rectangular in shape. It is twenty feet wide and 109.08 feet deep. The site is improved with a three story structure which was constructed about 1900.
3. A Certificate of Occupancy No. B-48435 was issued March 25, 1965 for the subject premises as an apartment house consisting of four units, second and third floors. A certificate of occupancy No. B-105499 was issued February 8, 1978 for a retail art gallery, part of first floor.
4. The subject property is now vacant except for a caretaker on the premises.
5. The applicant seeks permission to allow the existing commercial/residential use building to be converted to complete commercial use. The application for a Certificate of Occupancy was predicated upon the use of the second and third floors as offices. The applicant would require a variance from the allowable FAR of 1.5 and a variance that the required three on-site parking spaces measure nine feet by nineteen feet.
6. The applicant testified that the immediate area of 8th Street has been revitalized. Most buildings have been converted to retail and office use in their entirety and very few apartments remain on second and third floors.

7. The applicant has owned the subject property for fifteen years. The structure occupies approximately seventy-nine percent of the site. There are three parking spaces in the rear of the building which are approximately a foot smaller than prescribed by the Zoning Regulations.

8. The current prescribed FAR for the subject C-2-A District is 1.5. Prior to 1978 the permissable FAR was 2.0. The current permitted total gross floor area is 3,272.40 square feet. Under the former regulations 4,363.20 square feet would have been permitted. The FAR variance sought is 2,181.6 square feet.

9. The applicant testified that the third floor of the subject structures is not feasible for residential living since with commercial uses on the first and second floors, the building would be open to the public and make the third floor less secure; there would be the noise and traffic from the commercial uses; the Marine Barracks is to the east of the subject site and the subject street is basically composed of commercial uses. Because of all these conditions, the apartments are less desirable and less marketable.

10. The applicant testified that she would seek to have artisan-type commercial uses in her building that would provide services to the neighborhood but that if she was not able to attract such tenants she would need the option of using the space for office purposes.

11. The applicant has no lease commitments at this time.

12. The Board inquired if the applicant would accept conditions imposed by the Board limiting the commercial uses to which the property could be put. The applicant stated that she would prefer to still have the option of office uses for the site.

13. There were many letters in the record from commercial tenants/owners and residents in favor of the application on the grounds that there is little commercial space available in the Capitol Hill area and shops are needed; that the subject street in its conversion to commercial uses has revitalized the properties, made the streets safer and more secure for the neighborhood and that the subject street is essentially commercial with few remaining residential uses. A petition was submitted in support of the application.

14. There was no opposition to the application at the public hearing or of record.

15. Advisory Neighborhood Commission - 6B recommended that the application be approved. In its letter dated July 29, 1980, it stated that the ANC felt that a strict application of the law would work a hardship on the applicant considering the difficulty of providing separate entrances for retail, office and residential users. The change in F.A.R. requirements for an existing building and an existing owner, would present a particularly inequitable situation. In addition, the 700 block of Eighth Street, S.E., is almost entirely commercial. Nearly all of the above-street-level apartments have already been converted to office use. No neighborhood opposition was heard and a representative of the United States Marine Corps, which occupies the entire east side of the street, appeared before the ANC Planning and Zoning Committee and indicated that the Corps had no objection to the application. The requested parking variance is small. Each of the required three spaces would only be a foot smaller than prescribed. The variances requested would be in total harmony with the surrounding uses and would be a substantial benefit to the neighborhood. The Board, for reasons stated below, does not concur with the recommendations of the ANC.

16. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board finds that the variance sought is not minimal and that it is needed for approximately the entire third floor of the structure. The applicant is reluctant to accept conditions that the Board may impose as to the types of uses to occupy the structure. The Board is extremely reluctant to grant what could appear to be an open-ended approval at the site to exceed the permissible FAR. Certain office uses could create other problems which the site cannot accommodate such as parking requirements. The Board for that reason, cannot concur with the recommendation of the ANC.

17. At the public meeting of September 3, 1980, the Board denied the application. On September 24, 1980 the applicant filed a motion for Reconsideration or in the alternative, further hearing. At the public meeting of October 1, 1980, the Board denied the motion as premature since the final Order had not been issued.

18. The subject application is distinguishable from BZA Application No. 13333, which the Board granted. Both applicants sought a variance from the FAR requirements of the Zoning Regulations. Both sites are located on 8th Street, one square apart. Both applicants sought to convert an existing commercial/residential use building to complete commercial use. In BZA Application No. 13333 a two floor structure was concerned. Although the second floor had been used for apartments, a Certificate of Occupancy had never been issued for such use. The FAR variance sought was for approximately one third of the second floor use. The variance was minimal.

19. Since the variance from the FAR requirements is dispositive of the application, the Board need not determine the merits of the variance requested from the size of the on-site parking spaces.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing of a practical difficulty inherent in the property itself. The site is rectangular in shape and can be used for the purpose for which it is zoned. The Board concludes that the practical difficulty is not in the site, but in the uses to which the applicant would put the structure. The Board notes that the applicant has no lease commitments. The Board concludes that the applicant has not proven a practical difficulty within the meaning of the Zoning Regulations. Also, the Board for the reasons stated in Finding No. 16 in response to the recommendation of the ANC, cannot grant this application. For all the above reasons, the Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to DENY; William F. McIntosh OPPOSED by PROXY; Leonard L. McCants not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 11 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."